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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

CITY OF FREMONT,
NEBRASKA

Respondent.

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Docket No. CWA-07-2003-0093

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region VII (EPA) and the city of Fremont, Nebraska (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(B)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of Class II administrative penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (hereinafter "CWA" or "the Act") 33 U.S.C. § 1319(g), and in

accordance with Subpart I of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation or Suspension of Permits (Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act), 40 C.F.R. Part 22).

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 405 of the CWA, 33 U.S.C. § 1345, and the regulations promulgated thereunder and codified at 40 C.F.R. Part 503.

Parties

3. The Complainant, by delegation from the Administrator of EPA, and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands, and Pesticide Division, EPA, Region VII.

4. The Respondent is the City of Fremont, Nebraska, a "person," as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

Alleged Violations

5. Respondent was at all relevant times the "owner or operator" of the Fremont Wastewater Treatment Plant, NPDES Permit No. NE-0031381. The Fremont Wastewater Treatment Plant produces sewage sludge, as defined by 40 C.F.R. § 503.9.

6. Respondent applies "bulk sewage sludge" produced by the Fremont Wastewater Treatment Plant to "agricultural land", as those terms are defined by 40 C.F.R. § 503.11.

7. On May 25, 1999, September 14, 1999 and October 14, 1999, pursuant to section 308(a) of the Clean Water Act, EPA requested Respondent to submit, for the period of 1994 to

the present all of its sludge handling reports prepared by or on behalf of the City; all sludge monitoring reports, or a complete summary of all sludge monitoring data; site by site application records as required by 40 C.F.R. § 503.17; calculations of agronomic loading rates for each application site and records of crop harvests for those sites; results of nitrogen and phosphorus monitoring for soil at each of the application sites used by the City; and results of nitrate monitoring for groundwater at each of the application sites used by the City.

8. On July 6, 1999, September 28, 1999 and October 28, 1999 Respondent submitted its responses (the "Responses" or "Respondent's Responses") to the EPA Request.

9. Respondent generates "sewage sludge" that is used for "land application" on "agricultural land," as these terms are defined by 40 C.F.R. §§ 503.9(w), 503.11(h) and 503.11(a), respectively.

10. Pursuant to § 503.14(d), bulk sewage sludge shall be applied to agricultural land at a whole sludge application rate that is equal to or less than the agronomic rate for the bulk sewage sludge.

11. Respondent applied bulk sewage sludge to land on numerous occasions in 1997, 1998 and 1999. The bulk sewage sludge was applied above the agronomic rate in each of these calendar years in violation of § 503.14(d).

CONSENT AGREEMENT

The Complainant and Respondent hereby agree as follows:

1. Respondent admits the jurisdictional allegations of the Complaint.

2. Respondent neither admits or denies the factual allegations as set forth above.
3. Respondent certifies by the signing of this Consent Agreement that it is in compliance with the requirements of Section 405 of the CWA, 33 U.S.C. § 1345, and the regulations at 40 C.F.R. Part 503.
4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in the Complaint.
5. In settlement of this matter, Respondent agrees that by no later than June 30, 2004, it will have achieved Class A sludge by composting treated Class B sludge with yard wastes using the Windrow method. All appropriate monitoring will be done on an ongoing basis to verify that Class A sludge is being produced. In order to achieve Class A the following improvements must be made to the Respondent's facility: grading, installation of an all-weather surface, and run-off control measures. Furthermore, the Respondent must receive a permit from the Nebraska Department of Environmental Quality for a Solid Waste Compost Site. It is expected that the permitting process will take 120-150 days. This project will result in a further reduction of pathogens and the sludge would be able to be applied to agricultural land as well as public contact sites as defined in 40 C.F.R. Part 503, Section 503.11(l). Respondent's contribution to the cost of this project will be no less than \$120,000.
6. Respondent agrees that by no later than forty-five (45) days following completion of the SEP described under Paragraph 5 above, Respondent will submit to EPA a statement verifying that the SEP so described has been completed per the terms of this Consent Agreement, and will attach to such statement an itemized accounting of the costs incurred and copies of

pertinent invoices or other records documenting such construction of facilities and installation of equipment. Each statement shall include the following certification language:

I certify that the information accompanying this submittal is true, accurate and complete. I am aware that there are significant penalties for submitting false information to the United States, its agencies and departments, including the possibility of fine and imprisonment for knowing violations.

Such statement shall be submitted to Kent Johnson, Senior Assistant Regional Counsel, at the address indicated below.

7. Respondent agrees that if the SEP described in Paragraph 5 is not completed satisfactorily or Respondent has not made a good faith, timely effort to implement the SEP, Respondent shall pay a stipulated penalty, subject to the exception stated in subparagraphs 7.b. and 7.d. below. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith and timely effort to implement the SEP is within the sole discretion of EPA.

a. If the SEP as described in Paragraph 5 above, is unsatisfactorily completed, as determined by EPA, payment of a stipulated penalty shall be made in the amount of \$40,000.

b. If EPA determines that Respondent has made good faith and timely efforts to complete a SEP, and Respondent certifies, with supporting documentation that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, no stipulated penalty will be imposed.

c. If the SEP is satisfactorily completed, but Respondent spent less than 90 percent of the amount of money required to be spent for the project, as set forth in Paragraph 5 above, payment of a stipulated penalty shall be made in the amount of \$12,000.

d. If the SEP is satisfactorily completed, and the Respondent spent at least 90 percent of the amount of money required to be spent for the projects, no stipulated penalty will be imposed.

8. EPA has considered the appropriateness of the penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and has determined that the appropriate penalty for settlement of the violations set forth in the subject Complaint is Fifty Thousand Dollars (\$50,000.00).

Payment of this penalty and completion of the agreed to SEP as set forth herein shall satisfy all claims arising out of the facts alleged in the Complaint.

9. Respondent and Complainant agree to pay their own costs and attorneys' fees incurred as a result of these actions.

10. Respondent consents to the issuance of the Order hereinafter recited and consents to the payment of the civil penalty and performance of the SEPs as set forth in this Consent Agreement and Consent Order.

11. Each signatory to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Consent Order.

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and based upon information contained in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall comply with the requirements of Section 405 of the CWA, 33 U.S.C. § 1345, and 40 C.F.R. Part 503 during the period this Order is in effect.
2. Respondent certifies that it shall complete the Supplemental Environmental Project ("SEPs") as described in Paragraph 5 of the foregoing Consent Agreement on or before the

scheduled dates of completion for such so described in Paragraph 5.

3. Respondent shall, no later than forty-five (45) days following completion of the SEP described in Paragraph 5 of the Consent Agreement, submit to EPA a statement complying with the terms of Paragraph 6 of the Consent Agreement, verifying that the SEP has been completed per the terms of this Consent Agreement and Consent Order. Such statement shall be submitted to Kent Johnson, Senior Assistant Regional Counsel, at the address indicated below.

4. If the SEP described in Paragraph 5 of the Consent Agreement is not completed satisfactorily or Respondent has not made a good faith, timely effort to implement the SEP. Respondent shall pay a stipulated penalty, subject to the exception stated in subparagraphs 4.b. and 4.d. below. The determination of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith and timely effort to implement the SEP is within the sole discretion of EPA. In the event Respondent fails to complete the SEP set forth in Paragraph 2 above, on or before its scheduled date of completion, Respondent shall pay a stipulated penalty immediately upon written direction and demand by EPA, as follows:

a. If the SEP as described in Paragraph 5 of the above Consent Agreement is unsatisfactorily completed, as determined by EPA, payment of a stipulated penalty shall be made in the amount of Forty Thousand Dollars for the SEP described in Paragraph 5.a. of the above Consent Agreement.

b. If EPA determines that Respondent has made good faith and timely efforts to complete a SEP, and Respondent certifies, with supporting documentation that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, no stipulated

penalty will be imposed.

c. If the SEP is satisfactorily completed, but Respondent spent less than 90 percent of the amount of money required to be spent for the project, as set forth in Paragraph 5 of the above Consent Agreement, a stipulated penalty shall be required in the amount of Twelve Thousand Dollars (\$12,000).

d. If the SEP is satisfactorily completed, and the Respondent spent at least 90 percent of the amount of money required to be spent for the projects, no stipulated penalty will be imposed.

5. Respondent shall pay a total administrative civil penalty of Fifty Thousand Dollars (\$50,000.00) within ten (10) days of receipt of a copy of this fully executed Consent Agreement and Final Order. Payment shall be by cashier's or certified check, made payable to "Treasurer, United States of America," and referencing EPA Docket No. ~~VII-03-W-00~~ ^{CWA-07-2003-0093 KR}, and remitted to:

EPA - Region VII
Attn.: Regional Hearing Clerk
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

A copy of the check shall be mailed to:

Kent Johnson
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

6. Failure to pay the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon at the rate of two percent (2%) per annum.

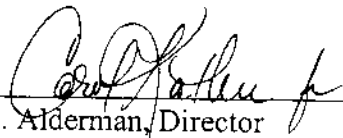
7. Respondent and Complainant shall pay their own costs and attorneys' fees incurred as a result of these actions.

8. Compliance with the terms of this Consent Agreement and Final Order satisfies all claims arising out of the facts alleged in the Complaint. This Consent Agreement and Final Order shall terminate after satisfaction by Respondent of the requirements of this Final Order.


9. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 N. 5th Street, Kansas City, Kansas 66101.

COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

Date: 3/25/03

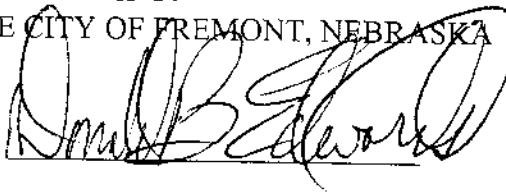
By: 
Leo J. Alderman, Director
Water, Wetlands and Pesticides Division

Date: 3/24/03

By: 
Kent Johnson
Senior Assistant Regional Counsel

RESPONDENT:
THE CITY OF FREMONT, NEBRASKA

Date: 3-14-03

By: 
Title: Mayor

IT IS SO ORDERED. This Order shall become effective immediately.

A handwritten signature in cursive script, appearing to read "Robert L. Patrick", written over a horizontal line.

Robert L. Patrick
Regional Judicial Officer
Region VII

Date: May 20, 2003

IN THE MATTER OF City of Fremont, Nebraska, Respondent
Docket No. CWA-07-2003-0093

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Kent Johnson
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Dean Skokan, Esq.
City Attorney
City of Fremont
P.O. Box 1266
Fremont, NE 68026

Dated: 5/20/03



Kathy Robinson
Regional Hearing Clerk